

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR INITIATION OF RULE AMENDMENTS**

Agenda # II.B.3.

Agenda Item Summary: The Department requests that the Board initiate rulemaking to amend the air quality rules to revise the amount of the annual air quality operation fees and air quality open burning fees and to make other miscellaneous revisions to the fee rules.

List of Affected Rules: This request to initiate rulemaking would amend ARM 17.8.501, 17.8.504, 17.8.505, 17.8.511, 17.8.514 and 17.8.515.

Affected Parties Summary: The proposed amendments to the annual air quality operation fees would affect all of the approximately 500 facilities in existence as of January 1, 2003, that either hold an air quality permit or that will be required to obtain an air quality permit pursuant to Title V of the Federal Clean Air Act. The proposed amendments to the open burning fees would affect all of the major open burners in the state (there are 12 in the state at this time): the Bureau of Indian Affairs; the Bureau of Land Management; F.H. Stolze Land & Lumber Company; Louisiana-Pacific Corporation; the Montana Department of Natural Resources & Conservation; the National Park Service; Pyramid Mountain Lumber, Inc.; Plum Creek Timber Company; R-Y Timber, Inc.; the U.S. Fish & Wildlife Service; the U.S. Forest Service; and Wyoming Sawmills, Inc.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking and conduct a public hearing to consider the proposed amendments.

Background: Pursuant to 75-2-220, MCA, the Department assesses air quality permit application fees, annual air quality operation fees, and open burning permit fees. In the aggregate, these fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the Board.

Annual air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted. The amount of money the Department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of fee carryover from the previous fiscal year. The emission component of the operation fee is revised also to account for changes in the total amount of pollutants emitted in the state in the previous calendar year. This rulemaking would set the air quality operation fees to be billed in calendar year 2003. Air quality fees billed in 2003 will be based on emissions from calendar year 2002 and will fund the Department's activities in fiscal year 2004.

The legislative appropriation for fiscal year 2003 was \$2,430,557. The amount of the carryover

from fiscal year 2002 was \$231,742. The total amount of pollutants reported for last year's fees was 112,416 tons, and the per-ton component of the air quality operation fee was \$17.89.

The appropriation for fiscal year 2004 is \$2,665,948, an increase of \$235,391 from last fiscal year. The projected carryover from fiscal year 2003 is \$227,946. The total amount of pollutants reported for 2003 fees is 103,917 tons. Based upon the appropriation, the carryover, the projected permit application fees, and the emission inventory, to cover the Department's costs of developing and administering the air quality permitting program, the Department is requesting that the board increase the per ton charge to \$20.61.

The Department also is requesting that the Board make miscellaneous amendments to ARM 17.8.501 and 17.8.505 for consistency with the new Subchapter 7 air quality permit rules, to clarify the rules, to allow adequate time for payment of fees due after conclusion of a fee appeal, to change the date used for imposing a late fee, and to make minor clerical changes that would have no substantive effect and would make the rules easier to read.

The Department is requesting that the Board amend ARM 17.8.514 to revise the fee required for major open burning permit applications for fiscal year 2004. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the Department develops a budget reflecting the cost the Department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2002, the major open burners reported 6129.1 tons of emissions, compared to 7691.4 tons for calendar year 2001, or a decrease of 1562.3 tons.

The budget for operating the program for 12 major open burners in fiscal year 2004 is \$47,737.00, compared to a budget of \$44,723.00 for fiscal year 2003. The \$3,014.00 budget increase is due to expected increases of \$1,709.00 for personnel services, \$975.00 for balloon runs, \$15.00 for miscellaneous expenses, and \$393.00 for indirect costs. Travel expenses are expected to decrease by \$78.00. Due to the decrease in the emission inventory and the expected increase in expenses for the program, the Department is requesting that the Board increase the per-ton charge. The Department is requesting that the Board increase the permit fees from \$13.32 per ton of particulate, \$3.33 per ton of oxides of nitrogen, and \$3.33 per ton of volatile organic compounds emitted to \$16.60, \$4.15, and \$4.15, respectively.

The Department is requesting that the Board amend ARM 17.8.515, relating to the department's ability to collect more than one fee simultaneously, to conform the air quality open burning fee rules to the air quality fee rules. The Department is requesting that the Board also amend ARM 17.8.515 to require a \$25 application fee for a firefighter training open burning permit and to clarify that the fee for an untreated wood-waste open burning permit at a licensed landfill site is included in the solid waste management system licensing fee.

The Department also is requesting that the Board amend ARM 17.8.514 and 17.8.515 to make the same change proposed to ARM 17.8.505(4)(a), allowing 30 days for payment of any fee due after final disposition of an appeal, and that the Board make other minor clerical amendments to ARM 17.8.514 and 17.8.515 that would have no substantive effect and would make the rules easier to read.

Hearing Information: The Department recommends that the Board appoint a presiding officer and

conduct a public hearing to take comment on the proposed amendments.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking and appoint a presiding officer to conduct a public hearing, as described in the proposed MAR notice attached.

Enclosure:

1. Draft Notice of Public Hearing on Proposed Amendment.